

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS, et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action

Lead Case No.:

3:21-CV-00259-DCG-JES-JVB

AKILAH BACY, et al.,

Plaintiffs,

v.

JANE NELSON, et al.,

Defendants.

Consolidated Case No.:

1:21-CV-00965-DCG-JES-JVB

**BACY PLAINTIFFS' MOTION  
FOR LEAVE TO FILE RESPONSE**

The Bacy Plaintiffs, by and through their undersigned counsel, respectfully move this Court for leave to file a short response to Defendants' reply to Plaintiffs' letter briefs addressing the effect of *Petteway* on the resolution of this matter. The proposed response letter is attached as **Exhibit A**. Counsel for Defendants have stated that they oppose this Motion.

On October 15, 2024, as ordered by the Court, ECF No. 810, the Bacy Plaintiffs submitted a letter brief addressing the applicability of *Petteway v. Galveston County*, 111 F.4th 596 (5th Cir. 2024), to the Plaintiffs' claims in this case. ECF No. 814. In that letter, the Bacy Plaintiffs explained that *Petteway* affects only one of their claims regarding House districts in one county:

their challenge to the Texas House districts in Tarrant County, which depends on the allegation that an additional majority Black and Latino House district could be drawn there. *See* ECF No. 814 at 1 (citing ECF No. 613, ¶ 193; ECF No. 765, ¶ 14). The Bacy Plaintiffs further explained that each of their congressional district claims alleges that additional majority-Latino congressional districts could be drawn. *See id.* at 2 (citing ECF No. 613 ¶¶ 96–98, 105–06, 117–18, 125–26, 132, 141, 149, 158, 170, 178). While the Bacy Plaintiffs also allege alternative, coalition demonstrative districts in two instances, their claims do not depend on them. *See id.* (citing ECF No. 613 ¶¶ 139–40, 165–66).

Defendants submitted their own letter brief on the same day, summarily claiming without explanation that “The Bacy Plaintiffs seek to create five coalition districts.” ECF No. 815 at 4. Because the Bacy Plaintiffs’ letter brief already explained why that assertion was wrong, the Bacy Plaintiffs did not submit a reply to the Defendants’ letter brief as contemplated by the Court’s September 30 Order. *See* ECF No. 810.

In their reply letter submitted on October 21, however, Defendants attempted for the first time to support their argument for a broader dismissal, raising new arguments that do not accurately reflect the extent to which the Bacy Plaintiffs depend on minority coalition districts to meet the first *Gingles* precondition, which the Bacy Plaintiffs have not had an opportunity to address. ECF No. 823 at 3. The Bacy Plaintiffs accordingly seek leave to file a response to arguments raised for the first time in Defendant’s reply letter. *See Ga. Firefighters’ Pension Fund v. Anadarko Petroleum Corp.*, 99 F.4th 770, 774 (5th Cir. 2024) (“[W]hen a party raises new arguments or evidence for the first time in a reply, the district court must either give the other party an opportunity to respond or decline to rely on the new arguments and evidence.”). The Court

should allow the Bacy Plaintiffs to file their proposed response to assist the Court with the full and fair adjudication of the questions pending before it.

Dated: October 22, 2024

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Respectfully submitted,

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**CERTIFICATE OF CONFERENCE**

Counsel for the Plaintiffs conferred with counsel for the Defendants in a good-faith attempt to resolve the subject matter of this Motion, and counsel for the Defendants indicated that they oppose the Motion.

/s/ David R. Fox

**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on October 22, 2024, and that all counsel of record were served by CM/ECF.

/s/ David R. Fox